

## **EXHIBIT 1**

### **INTRODUCTION**

Respondent Richard G. Carlile was, at all relevant times to this matter, a member of the City of Santa Rosa Planning Commission. He served on the planning commission for two terms, from January 1997 to December 2002. Prior to his appointment to the planning commission, he served on the Santa Rosa Design Review Board from 1977 to 1992.

In this matter, Respondent made, participated in making, and further attempted to use his official position to influence governmental decisions in which he had a financial interest, by meeting or communicating with members of city staff assigned or otherwise involved in his clients' projects or land use matters. Respondent is, and was at all relevant times, a co-owner of one of Sonoma County's largest civil engineering firms, Carlile-Macy.

In addition, Respondent failed to disclose, over the course of four years, large sources of income on his annual statements of economic interests.

For the purposes of this Stipulation, Respondent's violations of the Political Reform Act (the "Act")<sup>1</sup> are stated as follows:

**COUNT 1:** On or about April 2, 1999, Respondent Richard G. Carlile failed to disclose a reportable economic interest, an investment interest in Sonoma National Bank, on a 1998 annual statement of economic interests, in violation of sections 87203 and 87206 of the Government Code.

**COUNT 2:** On or about April 2, 1999, Respondent Richard G. Carlile failed to disclose a reportable economic interest, income from clients to a business entity for whom his pro rata share was \$10,000 or more, on a 1998 annual statement of economic interests, in violation of sections 87203 and 87207, subdivision (b) of the Government Code.

**COUNT 3:** On April 8, 1999, Respondent Richard G. Carlile made and participated in making a governmental decision regarding a conditional use permit for the Santa Rosa Golf Center, in which he knew or had reason to know he had a financial interest, in violation of section 87100 of the Government Code.

**COUNT 4:** On or about July 23, 1999, Respondent Richard G. Carlile failed to

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<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of title 2 of the California Code of Regulations. All regulatory references are to title 2, division 6 of the California Code of Regulations, unless otherwise indicated.

disclose reportable economic interests, proceeds from the sale of real property and income from clients to a business entity for whom his pro rata share was \$10,000, on an amended 1997 annual statement of economic interests, in violation of sections 87203 and 87207, subdivision (a) of the Government Code.

COUNT 5: On or about April 3, 2000, Respondent Richard G. Carlile failed to disclose a reportable economic interest, income from clients to a business entity for whom his pro rata share was \$10,000 or more, on a 1999 annual statement of economic interests, in violation of sections 87203 and 87207, subdivision (b) of the Government Code.

COUNT 6: On or about June 22, 2000, Respondent Richard G. Carlile made and participated in making a governmental decision regarding a general plan amendment to allow the development of apartments by Cobblestone Homes, Inc., in which he knew or had reason to know he had a financial interest, in violation of section 87100 of the Government Code.

COUNT 7: On or about June 26, 2000, Respondent Richard G. Carlile attempted to use his official position to influence a governmental decision concerning the Trione Parcel Map, in which he knew or had reason to know he had a financial interest, in violation of section 87100 of the Government Code.

COUNT 8: On or about March 30, 2001, Respondent Richard G. Carlile failed to disclose a reportable economic interest, income from clients to a business entity for whom his pro rata share was \$10,000 or more, on a 2000 annual statement of economic interests, in violation of sections 87203 and 87207, subdivision (b) of the Government Code.

COUNT 9: On or about July 31, 2002, Respondent Richard G. Carlile attempted to use his official position to influence a governmental decision concerning The Rises project, in which he knew or had reason to know he had a financial interest, in violation of section 87100 of the Government Code.

### **SUMMARY OF THE LAW**

One of the findings on which the Act is based is that public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests, or the interests of persons who have supported them. (Section 81001, subd. (b).) Therefore, one of the stated purposes of the Act is that the assets and income of public officials, which may be materially affected by their official actions, be disclosed, and in

appropriate circumstances, that the officials disqualify themselves from acting, so that conflicts of interest may be avoided. (Section 81002, subd. (c).)

#### A. Economic Interests Disclosure Requirement

In furtherance of the purpose of disclosure, Article 2 of the Act, found at sections 87200-87210, requires every person who holds an office specified in section 87200, including members of planning commissions, to file periodic statements disclosing their reportable economic interests. Section 87500, subdivision (g) provides that such statements shall be filed with the agency, which shall make a copy of the statements and transmit the originals to the Fair Political Practices Commission (the “Commission”).

Under section 87202, members of planning commissions are required to file an assuming office statement, within 30 days after assuming office, disclosing their investments and real property interests held on the date of assuming office, and income received during the 12 months before assuming office.

Under section 87203, members of planning commissions are required to file an annual statement of economic interests (“SEI”), each year, at a time specified by Commission regulations, disclosing their investments, interests in real property, and income. The statement must include all the economic interests the planning commissioner held during the preceding calendar year, whether or not they are still held at the time of filing.

When an investment is required to be disclosed in an SEI, section 87206, as it was in effect in 1999, provides that the statement shall contain the following information regarding the investment: 1) the nature of the investment; 2) the name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged; 3) the fair market value of the investment,<sup>2</sup> whether it equals or exceeds \$1,000 but does not exceed \$10,000, whether it exceeds \$10,000 but does not exceed \$100,000, or whether it exceeds \$100,000; 4) in the case of a statement filed under section 87203, if the investment was partially or wholly acquired or disposed of during the period covered by the statement, the date of acquisition or disposal.

When income is required to be disclosed in an SEI, section 87207, subdivision (a), as it was in effect in 1999 through 2000, provides that the statement shall contain the following information regarding the income: 1) the name and address of each source of income aggregating \$250 or more in value,<sup>3</sup> or \$50 or more in value if the income was a gift, and a general description of the business activity, if any, of each source; 2) the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, whether it was at least \$250 but did not exceed \$1,000, whether it was in excess of \$1,000 but was not greater than \$10,000, or whether it was greater than \$10,000; 3) a description of the consideration, if any, for which the income was received; 4) in the case of a loan, the annual interest rate, the security, if any, given for the loan, and the term of the loan.

<sup>2</sup> Effective January 1, 2001, the value of an investment increased to \$2,000 or more, and the fair market value ranges of the investment also increased.

<sup>3</sup> Effective January 1, 2001, the value of a source of income increased to \$500 or more, and the aggregate value ranges of a source of income also increased.

When a public official's pro rata share of income to a business entity is required to be disclosed in an SEI, section 87207, subdivision (b) provides that the statement shall contain the following information regarding the income: 1) the name, address, and a general description of the business activity of the business entity; and 2) the name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from that person was equal to or greater than \$10,000.

## B. Conflicts of Interest Prohibition

In order to prevent conflicts of interest, section 87100 prohibits state and local officials from making, participating in making, or in any way attempting to use their official position to influence a governmental decision in which they know, or have reason to know, that they have a financial interest. Section 82048 defines a "public official" to include every member, officer, employee, or consultant of a state or local governmental agency. A public official "makes a governmental decision" when the official votes on a matter, appoints a person, commits his or her agency to a course of action, or enters into a contractual agreement on behalf of his or her agency. (Regulation 18702.1, subd. (a).) With regard to a governmental decision which is within or before an official's agency, a public official "is using or attempting to use his or her official position to influence the decision" if, for the purpose of influencing the decision, the official contacts, appears before, or otherwise attempts to influence, any member, officer, employee, or consultant of the agency. (Regulation 18702.3, subd. (a).)

Under section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the public official, or on a member of his immediate family, or on certain economic interests, including investment interests, and sources of income.

Whether the reasonably foreseeable financial effect of a governmental decision is material depends upon the nature of the interest, whether the effect is direct or indirect, and if direct, the degree to which the economic interest is involved in the decision. Under Regulation 18704.1, subdivision (a), a person or business entity is "directly involved" in a governmental decision when that person or entity, either directly or by an agent: 1) initiates the decision in which the decision is made by filing an application, claim, appeal, or similar request; or 2) is a named party in, or the subject of, the decision concerning the decision before the official or the official's agency.

### (1) Disqualification Based on Investment Interests

Section 87103, subdivision (a), as it was in effect in 1999, provides that an official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on any business entity in which the public official has direct or indirect investment worth one thousand dollars (\$1,000) or more.<sup>4</sup>

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<sup>4</sup> As noted in footnote 2, effective January 1, 2001, the value of an investment increased to \$2,000 or more.

Regulation 18705.1, as it was in effect in 1999, provides, at subdivision (a), that the financial effect of a governmental decision on a business entity is material if the entity is directly involved in the decision, unless an exception applies. If a business entity is indirectly involved in a governmental decision, Regulation 18705.1, further provides, at subdivision (b), that the financial effect of a decision on a business entity is material, if any of the materiality standards, set forth in Regulation 18705.1, subsections (b)(1) through (b)(7) are satisfied.

Regulation 18705.1, subdivision (b)(5) states that the financial effect of a governmental decision is material on a business entity that has net tangible assets of at least \$18,000,000 and had pre-tax income for the last fiscal year of at least \$2,500,000, if it is reasonably foreseeable that the decision will result in an increase or decrease to the business entity's gross revenues for a fiscal year in the amount of \$150,000 or more; or, the decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$50,000 or more; or, the decision will result in an increase or decrease in the value of assets or liabilities of \$150,000 or more.

## (2) Disqualification Based on a Source of Income

Section 87103, subdivision (c), as it was in effect in 2000, provides that an official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on any source of income, except gifts and loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$250 or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.<sup>5</sup> Section 82030, subdivision (a), defines the term "income" to include a pro rata share of any income of any business entity or trust in which the individual owns, directly, indirectly, or beneficially, a 10-percent interest or greater.

Regulation 18705.3, subdivision (a) provides that any reasonably foreseeable financial effect of a decision is material if any person or business entity which has been a source of income to the official within the preceding 12 months is directly involved in a decision before the official's agency.

The material financial effect of a decision on an economic interest is considered reasonably foreseeable, within the meaning of section 87103, if it is substantially likely that one or more of the materiality standards applicable to that economic interest will be met as a result of the governmental decision. (Regulation 18706; *In re Thorner* (1975) 1 FPPC Ops. 1198.)

## **SUMMARY OF THE FACTS**

Respondent Richard G. Carlile was a member of the City of Santa Rosa Planning Commission. He served on the planning commission for two terms, from January 14, 1997 to

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<sup>5</sup> As noted in footnote 3, effective January 1, 2001, the aggregate value of a source of income increased to \$500 or more.

December 13, 2002. Prior to his appointment to the planning commission, he served 15 years on the Santa Rosa Design Review Board, from 1977 to 1992.

Respondent is a principal in Carlile-Macy, an established Santa Rosa civil engineering firm, whose annual gross receipts exceed \$1 million. His firm, which is involved in civil engineering, surveying, and landscape architecture, has been the recipient of numerous contracts by the City of Santa Rosa, and his projects frequently have gone before the Santa Rosa Planning Commission and Santa Rosa City Council for approval.

When Respondent assumed office in January 1997, he held a 50-percent interest in Carlile-Macy, a California general partnership. Over the years his ownership interest in Carlile-Macy has gradually declined, so that in July 2002, his interest was 26 percent. Respondent is president of the firm.

### **Count 1: Failure to Disclose an Investment Interest on a 1998 Annual SEI (Sonoma National Bank)**

On April 2, 1999, Respondent filed his 1998 annual SEI. The statement did not contain a Schedule A-1, entitled "Stocks, Bonds, and Other Interests," which discloses investments held by a business entity or trust in which the official or the official's immediate family has less than a 10-percent ownership interest. On the cover page, Respondent verified, under penalty of perjury, that he had no reportable investments. In fact, Respondent owned at least 900 shares of stock in Sonoma National Bank, worth \$10,000 or more.

On July 23, 1999, Respondent filed an amended 1998 annual SEI, in which he disclosed his investment interest in Sonoma National Bank, stock with a fair market value of \$10,000-\$100,000. In a cover letter to the Santa Rosa City Clerk accompanying this amendment, Respondent stated he failed to previously disclose this investment interest because he misread the disclosure requirement, which he believed to be 1000 or more shares of stock, rather than stock worth \$1,000 or more. Respondent's disclosure of his stock holdings in Sonoma National Bank was prompted by press coverage of a controversial issue concerning the Santa Rosa Golf Center that came before the Santa Rosa Planning Commission and the Santa Rosa City Council, as described below in Count 3.

By failing to timely disclose a reportable economic interest, an investment interest in Sonoma National Bank, on his 1998 annual statement of economic interests, Respondent violated sections 87203 and 87206.

### **Count 2: Failure to Disclose Income from Clients to Carlile-Macy on a 1998 annual SEI**

On April 2, 1999, Respondent filed his 1998 annual SEI. On Schedule A-2 of the statement, entitled "Investments, Income, and Assets of Business Entities/Trusts," which discloses investments held by a business entity or trust in which the official or the official's immediate family has a 10-percent or greater ownership interest, Respondent disclosed his interest in Carlile-Macy, and identified his pro rata share of the gross income to Carlile-Macy to be over \$10,000. However, Respondent failed to list the name of each source of income for

whom his pro rata share of the gross income to Carlile-Macy was \$10,000 or more, as expressly required by the Act.

On September 2, 2003, at the request of the Enforcement Division, Respondent filed an amendment to his 1998 annual SEI, in which he disclosed that Carlile-Macy received payments from eight persons during 1998 for whom his pro rata share of gross receipts was equal to or greater than \$10,000. Those sources of income are set forth in Attachment A, under the heading "1998 SEI Amendment."<sup>6</sup>

By failing to timely disclose a reportable economic interest, income from clients to a business entity for whom his pro rata share was \$10,000 or more, on his 1998 annual SEI, Respondent violated sections 87203 and 87207, subdivision (b).

**Count 3: Failure to Disqualify Himself from Making a Governmental Decision  
(Santa Rosa Golf Center)**

On December 30, 1996, Lorraine and Robert Ring of Ring Properties of Santa Rosa applied for a conditional use permit to construct a golf driving range on unimproved property in the City of Santa Rosa. City staff approved the project, known as the Santa Rosa Golf Center, on May 27, 1997 and issued building permits on July 30, 1997.

On July 30, 1998, the Rings' Santa Rosa Golf Center received a loan from Sonoma National Bank in the amount of \$1.585 million to construct the golf center. The loan was secured by a construction deed of trust. Construction proceeded from July 1998 to January 1999, and the driving range opened for business on January 13, 1999. The city began receiving complaints about the appearance of the golf driving range and errant golf balls not being contained within the site. In response to these complaints, the city determined that the conditional use permit for the Santa Rosa Golf Center was invalid, and directed the applicant, Lorraine and Robert Ring of Ring Properties of Santa Rosa, to go through the conditional use permit process again.

The Santa Rosa Planning Commission considered the Santa Rosa Golf Center's conditional use permit application de novo on February 25, 1999. The item was controversial. The planning commission minutes reflect that after a lengthy public hearing, the planning commission continued the matter to a future date for further action. Respondent participated in this decision. He made the motion to continue this item, and voted in favor of his motion.

The matter was continued to April 8, 1999, at which time, following further presentations and public comments, the Santa Rosa Planning Commission voted to deny the conditional use permit application of the Santa Rosa Golf Center. Respondent participated in making this decision. He seconded a motion to deny the conditional use permit application, and requested that staff draft a resolution for final action. Respondent voted in favor of his motion, which passed in a split vote, 3 to 2. Respondent's vote, however, was against his own economic interest.

As described in Count 1, at the time that Respondent made and participated in making the April 8, 1999 decision, Respondent had an investment interest in Sonoma National Bank.

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<sup>6</sup> Attachment A is attached to this Exhibit and incorporated herein by reference.

One of the speakers indicating his support for the project at the April 8, 1999 meeting was Dave Titus, Executive Vice President and Chief Lending Officer of Sonoma National Bank. Mr. Titus identified himself as representing the bank that financed the Santa Rosa Golf Center, and stated that it was important for the city to stand behind the project because capital was invested based on the city's approval.

Respondent knew Dave Titus personally and professionally for over 15 years. Respondent was a past director of Sonoma National Bank and conducted numerous business transactions with the bank.

Respondent's economic interest was indirectly involved in the decision to deny the conditional use permit, in that the decision placed in jeopardy the \$1.585 million loan the Sonoma National Bank made to the applicant to construct the Santa Rosa Golf Center.

Sonoma National Bank is a commercial bank headquartered in Santa Rosa. It is a wholly owned subsidiary of Northern Empire Bancshares, a bank holding company that conducts its business through Sonoma National Bank. The bank is not listed on any major stock exchange. However, it meets the standards for listing on the New York Stock Exchange, in that it had net tangible assets of at least \$18,000,000 and had pre-tax income for the 1999 fiscal year of at least \$2,500,000.

The Santa Rosa Golf Center was a million dollar investment undertaken by the Sonoma National Bank in reliance upon the city. It was reasonably foreseeable that a decision by the planning commission to subsequently deny a conditional use permit for the golf center, after a permit had been previously issued and approved, would have a material financial effect on the Sonoma National Bank, as provided in Regulation 18705.1, subdivision (b)(5).

By making and participating in making a governmental decision on April 8, 1999, regarding a conditional use permit for the Santa Rosa Golf Center, in which he knew or had reason to know he had a financial interest, Respondent violated section 87100.

On May 18, 1999, the Santa Rosa City Council considered the Santa Rosa Golf Center's appeal from the planning commission decision denying the conditional use permit application. Dave Titus appeared and spoke at the city council meeting on behalf of the Sonoma National Bank. Council member Wright abstained because she owned shares of stock in Sonoma National Bank. While the city council upheld the planning commission's resolution, the 3 to 2 vote was insufficient to uphold the planning commission's resolution, in that the Santa Rosa City Charter requires 4 aye votes to pass a city council resolution. As a result, the Santa Rosa Golf Center conditional use permit came back before the planning commission on July 8, 1999. This time Respondent abstained because of his investment interest in Sonoma National Bank.

#### **Count 4: Failure to Disclose Proceeds from the Sale of Real Property and Income from Clients to Carlile-Macy on an Amended 1997 Annual SEI**

On July 23, 1999, Respondent filed an amended 1997 annual SEI to disclose his investment interest in Sonoma National Bank, as described in Count 1.



On Schedule A-2 of the amended 1997 annual statement, entitled “Investments, Income, and Assets of Business Entities/Trusts,” which discloses investments held by a business entity or trust in which the official or the official’s immediate family has a 10-percent or greater ownership interest, Respondent disclosed his interest in Carlile-Macy, and identified his pro rata share of the gross income to Carlile-Macy to be over \$10,000. However, Respondent failed to list the name of each source of income for whom his pro rata share of the gross income to Carlile-Macy was \$10,000 or more, as expressly required by the Act.

On Schedule C of the amended 1997 annual SEI, entitled “Income and Business Positions,” Respondent disclosed Carlile-Macy as a source of income to him during 1997. However, he failed to disclose other income that he received during 1997 from sale of real property located at 565 West College Avenue, in the amount of \$703,500.

On September 2, 2003, at the request of the Enforcement Division of the Commission, Respondent filed an amendment to his 1997 annual SEI, in which he disclosed that: he received income from the sale of real property from John F. and Julia G. De Meo; and Carlile-Macy received payments from nine persons during 1997 for whom his pro rata share of gross receipts was equal to or greater than \$10,000. Those sources of income are set forth in Attachment A, under the heading “1997 SEI Amendment.”

By failing to timely disclose reportable economic interests, proceeds from the sale of the West College Avenue property and income from clients to a business entity for whom his pro rata share was \$10,000 or more, on an amended 1997 annual SEI filed on July 23, 1999, Respondent violated sections 87203 and 87207, subdivision (a).

#### **Count 5: Failure to Disclose Income from Clients to Carlile-Macy on a 1999 Annual SEI**

On April 3, 2000, Respondent filed his 1999 annual SEI.

On Schedule A-2 of the 1999 statement, entitled “Investments, Income, and Assets of Business Entities/Trusts,” which discloses investments held by a business entity or trust in which the official or the official’s immediate family has a 10-percent or greater ownership interest, Respondent disclosed his interest in Carlile-Macy, and identified his pro rata share of the gross income to Carlile-Macy to be over \$10,000. However, Respondent failed to list the name of each source of income for whom his pro rata share of the gross income to Carlile-Macy was \$10,000 or more, as expressly required by the Act.

On September 2, 2003, at the request of the Enforcement Division of the Commission, Respondent filed an amendment to his 1999 annual SEI, in which he disclosed that Carlile-Macy received payments from ten persons during 1999 for whom his pro rata share of gross receipts was equal to or greater than \$10,000. Those sources of income are set forth in Attachment A, under the heading “1999 SEI Amendment.”

By failing to timely disclose a reportable economic interest, income from clients to a business entity for whom his pro rata share was \$10,000 or more, on his 1999 annual SEI, filed on April 3, 2000, Respondent violated sections 87203 and 87207, subdivision (b).

#### **Count 6: Failure to Disqualify Himself from Making a Governmental Decision (Cobblestone Homes, Inc.)**

On June 22, 2000, there were two resolutions before the Santa Rosa Planning Commission. The resolutions concerned approval of changes to the general plan, including a general plan amendment from residential low density to residential medium density for a 1.27 acre site to allow the development of apartments, and approval of a negative declaration for that general plan amendment. Cobblestone Homes, Inc. had assembled several adjacent properties to the 1.27 acre site in Rincon Valley in order to construct a 90-unit apartment complex, known as Prospect Annex Apartments.

Respondent voted to approve the resolutions, both of which passed unanimously.

At the time Respondent made and participated in the above decisions to amend the general plan to allow the development of apartments by Cobblestone Homes, Inc., Cobblestone Homes, Inc. was a source of income to Respondent of \$10,000 or more. In June 2000, Respondent's partnership interest in Carlile-Macy was 41 percent. In the 12-month period preceding the decision, Carlile-Macy received \$97,412 from Cobblestone Homes, Inc.

Cobblestone Homes, Inc. was directly involved in the decision to amend the general plan to allow the development of its proposed apartment complex, in that it initiated that portion of the proceeding. As such, it was reasonably foreseeable that the decision would have a material financial effect on Cobblestone Homes, Inc.

By making and participating in making a governmental decision on June 22, 2000, to amend the general plan to allow the development of apartments by Cobblestone Homes, Inc., in which he knew or had reason to know he had a financial interest, Respondent violated section 87100.

#### **Count 7: Using His Official Position to Influence a Governmental Decision (Trione Parcel Map)**

On May 16, 2000, Anthony A. Cabrera sent a letter to Bruce Jarvis, of the Carlile-Macy firm, notifying him of city staff's determination that the Trione Parcel Map #587-560 White Oak Drive was not in substantial compliance with the tentative map.

Respondent contacted city staff on behalf of his client, Victor Trione, for the purpose of influencing staff's decision concerning the Trione Parcel Map. On June 26, 2000, Respondent sent a letter to Wayne Goldberg, Director of the Department of Community Development, challenging the determination of city engineer Cabrera as to substantial compliance and asking for a different interpretation or ruling in the matter.

At the time Respondent attempted to use his official position to influence the decision concerning the Trione Parcel Map, Victor Trione was a source of income of \$250 or more to Respondent. In June 2000, Respondent's partnership interest in Carlile-Macy was 41 percent. In the 12-month period preceding the decision, Carlile-Macy received \$5,566 from Victor Trione.

Victor Trione was directly involved in the decision, in that his representative, the Respondent, initiated the proceeding and his property was the subject of the proceeding. As such, it was reasonably foreseeable that the decision would have a material financial effect on Victor Trione.

By attempting to use his official position to influence a governmental decision on June 26, 2000 concerning the Trione Parcel Map, in which he knew or had reason to know he had a financial interest, Respondent violated section 87100.

**Count 8: Failure to Disclose Income from Clients to Carlile-Macy on a 2000 Annual SEI**

On March 30, 2001, Respondent filed his 2000 annual SEI.

On Schedule A-2 of the statement, entitled “Investments, Income, and Assets of Business Entities/Trusts,” which discloses investments held by a business entity or trust in which the official or the official’s immediate family has a 10-percent or greater ownership interest, Respondent disclosed his interest in Carlile-Macy, and identified his pro rata share of the gross income to Carlile-Macy to be over \$10,000. However, Respondent failed to list the name of each source of income for whom his pro rata share of the gross income to Carlile-Macy was \$10,000 or more, as expressly required by the Act.

On October 5, 2001, Respondent filed an amendment to his 2000 annual SEI to disclose, for the first time since he assumed office as a planning commissioner, the names of each source of income for whom his pro rata share of the gross income to Carlile-Macy was \$10,000 or more. Respondent made this disclosure at the request of Richard Day, who had notified the Santa Rosa City Attorney of the violation. There were nineteen undisclosed sources of income. Those sources of income are set forth in Attachment A, under the heading “2000 SEI Amendment.”

By failing to timely disclose a reportable economic interest, income from clients to a business entity for whom his pro rata share was \$10,000 or more, on his 2000 annual SEI, filed on March 30, 2001, Respondent violated sections 87203 and 87207, subdivision (b).

**Count 9: Using His Official Position to Influence a Governmental Decision  
(The Rises)**

On June 5, 2002, the City of Santa Rosa Community Development Department received a conditional use permit application for The Rises project, which proposed a new 10-story building, mixed-use development in the downtown core. Anthony Battaglia AIA, of Archumana, architects, filed the application. The property owner was Robert V. (“Buzz”) Pauley.

On July 1, 2002, Vince Rizzo, of the Pauley development team, sent a letter to Santa Rosa City Manager Jeffrey Kolin, protesting city staff’s requirement of an environmental impact report for The Rises. It was his position that the city should bear the entire cost of the environmental impact report, and that any sewer capacity issues should be the responsibility of the city.

On July 3, 2002, city planner Joel Galbraith sent a letter to Anthony Battaglia, of the Pauley development team, in which he summarized a meeting held that day at City Hall, regarding the status of the conditional use permit application for The Rises. Present at the meeting were Mr. Battaglia, Vince Rizzo, city planner Galbraith, and senior planner Marie Meredith. Among other things discussed at the meeting were the requirements for a sewer capacity study and the need for possible upsizing of the sewer line. It was Mr. Battaglia’s

position that the sewer study and upsizing should be the city's responsibility. At the meeting, Mr. Battaglia continued to challenge the necessity of an environmental impact report for The Rises project. City planner Galbraith agreed to conduct an initial study for The Rises, and make an environmental determination based upon the information submitted.

On July 24, 2002, Mr. Battaglia sent a letter to city planner Galbraith, in reply to his July 3, 2002 letter. In the letter, Mr. Battaglia advised city planner Galbraith that the applicant's consultants were in the process of addressing the sewer study.

Respondent made an appearance before city staff on behalf of his client, Robert Pauley, for the purpose of influencing city staff's decision concerning an environmental determination for The Rises project. On July 31, 2002, there was a meeting held at City Hall to discuss The Rises, and in particular, city staff's environmental determination for the project. Present at the meeting were Respondent, Anthony Battaglia, Vince Rizzo, Community Development Director Wayne Goldberg, city planner Joel Galbraith, senior planner Marie Meredith, and economic development manager Susan McCue of the City Manager's office. Respondent attended the meeting at the request of the Pauley development team.

It was staff's position that an environmental impact report would be required for the project, but that the applicant could appeal its decision to the Santa Rosa Planning Commission. Respondent argued for the applicant's position, stating that he did not believe an environmental impact report was necessary for the project, and that he did not believe the planning commission would approve staff's decision regarding the environmental impact report.

At the time Respondent attempted to use his official position to influence the decision regarding an environmental determination for The Rises project, Robert V. ("Buzz") Pauley was a source of income of \$500 or more to Respondent. On July 18, 2002, Mr. Pauley retained Carlile-Macy to prepare a sewer capacity study for The Rises, and to provide assistance with entitlement processing and environmental review. The fee arrangement was time plus materials, estimated at \$3,600 for the sewer study, and an allowance of \$2,000 for assistance. The contract stated that additional work may follow involving water capacity, storm drainage, tentative map, and an ALTA survey. In July 2002, Respondent's partnership interest in Carlile-Macy was 26 percent.

Robert V. ("Buzz") Pauley was directly involved in the decision, in that his development team initiated the proceeding and his property/project was the subject of the proceeding. As such, it was reasonably foreseeable that the decision would have a material financial effect on Mr. Pauley.

By attempting to use his official position to influence a governmental decision on July 31, 2002, concerning an environment determination for The Rises, in which he knew or had reason to know he had a financial interest, Respondent violated section 87100.

## **CONCLUSION**

Conflict of interest violations are among the most serious violations of the Act, and historically carry a high penalty. Respondent's violations are aggravated by the fact that they are part of an on-going pattern of conflict of interest violations.

SEI non-disclosure violations are also serious violations of the Act. In Respondent's case, as a principal of a major civil engineering firm in the City of Santa Rosa, the non-disclosure of substantial economic interests, occurring over a period of four years, was especially serious because of the potential for numerous conflicts. If Respondent had properly disclosed his investment interest in Sonoma National Bank, it may have prevented his illegal participation in the planning commission decision concerning the golf center. His participation had a significant effect on the outcome of the decision.

Respondent is an experienced public servant, having previously served as a 15-year member of the Santa Rosa Design Review Board.

The fact that Respondent has no prior history of SEI disclosure or conflict of interest violations, and fully cooperated with Enforcement Division staff, is somewhat mitigating. However, those factors do not outweigh the seriousness of the violations and the lengthy delay in providing full economic disclosure.

This matter consists of nine counts, which carry a maximum administrative penalty of Twenty-Four Thousand Dollars (\$24,000). Counts 1 through 7 carry a maximum administrative penalty of Fourteen Thousand Dollars (\$14,000), in that they occurred prior to January 1, 2001, when the maximum administrative penalty was up to \$2,000 per violation. Counts 8 and 9 occurred after January 1, 2001, when the maximum administrative penalty was raised to \$5,000 per violation, and carry a maximum administrative penalty of Ten Thousand Dollars (\$10,000).

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of the agreed upon penalty of Twenty-Four Thousand Dollars (\$24,000).